

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ALLISON R. VECE, *et al.*,

Plaintiffs,

vs.

ESTATE OF JOSEPH W. PLAUTZ,  
DECEASED, BY AND THROUGH REGAN  
PETERSON, *et al.*,

Defendants.

Case No.: 2:24-cv-01025-GMN-EJY

**ORDER GRANTING  
MOTION TO REMAND**

Pending before the Court is the Motion to Remand, (ECF No. 12), filed by Plaintiffs Allison R. Vece, Kevin H. Phelps, and Gayle Fedele (collectively “Plaintiffs”). Defendant Dignity Health filed a Response, (ECF No. 31), to which Plaintiffs replied, (ECF No. 33).

Because complete diversity does not exist between the Parties, the Court **GRANTS** Plaintiffs’ Motion to Remand.

**I. BACKGROUND**

This case arises from the alleged act of fertility fraud that occurred when Joseph W. Plautz, deceased, artificially inseminated Gayle Fedele with his own semen without her permission or knowing consent based on the fraudulent misrepresentation that the semen was obtained from a sperm bank. (*See generally* First Am. Compl. (“FAC”), Ex. 2 to Mot. Remand, ECF No. 12-2). Plaintiffs filed their initial Complaint in the Eighth Judicial District Court and subsequently filed their First Amended Complaint against Defendants Doe Special Administrator of the Estate of Joseph W. Plautz and Dignity Health.

Defendant Dignity Health removed this case to federal court on the basis of diversity jurisdiction. (Pet. Removal, ECF No. 1). Defendant maintains that complete diversity of

1 citizenship exists and the amount in controversy is met. (*Id.* ¶ 11). Plaintiffs now seek to  
2 remand to state court.

## 3 **II. LEGAL STANDARD**

4 “Federal courts are courts of limited jurisdiction,” and “possess only that power  
5 authorized by Constitution and statute, which is not to be expanded by judicial decree.”  
6 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal citations  
7 omitted). “It is to be presumed that a cause lies outside this limited jurisdiction, and the burden  
8 of establishing the contrary rests upon the party asserting jurisdiction.” *Id.* (internal citations  
9 omitted).

10 The federal removal statute provides that a defendant may remove an action to federal  
11 court based on federal question jurisdiction or diversity jurisdiction. 28 U.S.C. § 1441. “The  
12 ‘strong presumption against removal jurisdiction means that the defendant always has the  
13 burden of establishing that removal is proper,’ and that the court resolves all ambiguity in favor  
14 of remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)  
15 (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam)). “If at any time  
16 before final judgment it appears that the district court lacks subject matter jurisdiction, the case  
17 shall be remanded.” 28 U.S.C. § 1447(c).

18 To remove a state law civil action to federal court on the basis of diversity jurisdiction,  
19 a removing defendant must show that the parties are completely diverse and that the matter in  
20 controversy exceeds the sum or value of \$75,000. 28 U.S.C. § 1332(a). Complete diversity of  
21 citizenship under 28 U.S.C. § 1332 requires that each plaintiff be a citizen of a different state  
22 than each defendant. *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).  
23 Diversity is determined, and must exist, at the time the complaint is filed, and removal is  
24 effected. *Strotek Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002). A  
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corporation is deemed to be a citizen of every state by which it is incorporated, as well as the state where it has its principal place of business. 28 U.S.C. § 1322(c)(1).

### III. DISCUSSION

Plaintiff argues that remand is appropriate because Defendant failed to establish that this Court has diversity jurisdiction. (*See generally* Mot. Remand, ECF No. 12). The Parties dispute both conditions of diversity jurisdiction: complete diversity and the amount in controversy. But because the Court finds that complete diversity among the Parties does not exist, it need not determine whether the amount in controversy is met.

At the time of removal, the parties in the case were Plaintiffs Allison Vece, a citizen of Connecticut, Kevin Phelps, a citizen of Nevada,<sup>1</sup> and Gayle Fedele, a citizen of Connecticut, and Defendants Doe Special Administrator of the Estate of Joseph W. Plautz, a citizen of Nevada, and Dignity Health, a citizen of California. (*See generally* FAC). Plaintiffs argue that Defendant Dignity Health has not met its burden of establishing beyond a doubt that diversity of parties exists because the unknown Special Administrator of the Estate of Joseph Plautz must be a Nevada citizen. (Mot. Remand 6:11–12). Plaintiffs further argue that Defendant Dignity Health failed to establish that the Special Administrator of the Plautz Estate is a fraudulently joined party and must be ignored. (*Id.* 7:25–26). Because Defendant Dignity Health does not put forth arguments responding to Plaintiffs’ latter argument, the Court need only take up the former.

Defendant Dignity Health argues that the citizenship of the Doe Special Administrator must be ignored for purposes of diversity jurisdiction. (Resp. 7:24–8:1). While it is true that

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<sup>1</sup> The First Amended Complaint, which was removed to federal court, initially listed Kevin Phelps as a citizen of Connecticut. However, Plaintiffs filed an errata “to correct a typographical error as though set forth in the original First Amended Complaint.” (Errata at 2, Ex. 5 to Mot. Remand., ECF No. 12-5). The errata states: “Plaintiff KEVIN H. PHELPS (“Mr. Phelps”) is an individual currently residing in Clark County, Nevada, as if included in the original First Amended Complaint.” (*Id.*). Thus, Plaintiff Kevin Phelps was a citizen of Nevada at the time of removal.

1 when determining diversity jurisdiction “the citizenship of defendants sued under fictitious  
2 names shall be disregarded,” 28 U.S.C. § 1441(b)(1), many Courts in the Ninth Circuit  
3 “differentiate between purely ‘fictitious’ defendants, whose citizenship must be disregarded,  
4 and “real” Doe defendants whose identities are ascertainable,” *Dickson v. Walmart, Inc.*, No.  
5 2:23-cv-01386-MMD-NJK, 2023 WL 8827689, at \*2 (D. Nev. Dec. 21, 2023). Indeed, “some  
6 courts find the language of § 1441 preclusive . . . [but] others find a distinction exists between  
7 ‘fictitious’ and real party Does that requires greater scrutiny.” *Id.* (citing *Johnson v. Starbucks*  
8 *Corp.*, 475 F. Supp. 3d 1080, 1083 (C.D. Cal. 2020)); *see also Gardiner Fam., LLC v. Crimson*  
9 *Res. Mgmt. Corp.*, 147 F. Supp. 3d 1029, 1036 (E.D. Cal. 2015). The inquiry then becomes  
10 whether “[p]laintiffs’ description of Doe defendants or their activities is specific enough as to  
11 suggest their identity, citizenship, or relationship to the action.” *Dickson*, 2023 WL 8827689, at  
12 \*2 (citing *Gardiner Fam.*, 147 F. Supp. 3d at 1036) (collecting cases). In the present case, the  
13 pleadings are sufficient to establish that, as a matter of law, the Doe Special Administrator of  
14 the estate must be a Nevada citizen.

15 For purposes of diversity jurisdiction, “the legal representative of the estate of a  
16 decedent shall be deemed to be a citizen only of the same State as the decedent.” 28 U.S.C.  
17 § 1332 (c)(2). Here, Plaintiffs bring claims against the Doe Special Administrator of the Estate  
18 of Joseph W. Plautz. The Special Administrator, by law, is considered a resident of the state of  
19 the decedent. The decedent, Joseph Plautz, was a resident of Nevada, therefore, whomever the  
20 Special Administrator is, is likewise a resident of Nevada. Because the representative of the  
21 Plautz Estate is a citizen of Nevada and because Plaintiff Kevin Phelps is a citizen of Nevada,  
22 there is no complete diversity of the parties. Therefore, Defendant has not met its burden of  
23 establishing that complete diversity exists. Accordingly, the Court **GRANTS** Plaintiffs’  
24 Motion to Remand.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Remand, (ECF No. 12), is  
3 **GRANTED.**

4 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to **REMAND**  
5 this case to the Eighth Judicial District Court of Clark County for further proceedings. The  
6 Clerk of Court is also kindly directed to close this case.

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8 **DATED** this 29 day of January, 2025.

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12 Gloria M. Navarro, District Judge  
13 UNITED STATES DISTRICT COURT  
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